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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,219

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Lois Weisman

IOWA:048US

3887

7590 05/28/2008  
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EXAMINER

LIU, SAMUEL W

ART UNIT

PAPER NUMBER

1656

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/791,219	<b>Applicant(s)</b> WEISMAN, LOIS	
	<b>Examiner</b> SAMUEL W. LIU	<b>Art Unit</b> 1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008 and 30 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-26 and 33-58 is/are pending in the application.
- 4a) Of the above claim(s) 18, 19 and 24-26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### *Status of the claims*

Claims 18-26 and 33-58 are pending.

Applicant is advised that the Office action (“Final”) mailed 6/1/07 is vacated. The following Office action is applied.

The amendment filed 5/5/08 which cancels claims 1-17, 27-32 and 59-60, and amends claims 24-26 has been entered. Also, the applicant’s request (filed 5/5/08) for extension of time of three months has been entered. Claims 33-58 remain withdrawn from further consideration. Claims 18-19 and 24-26 are examined in this Office action.

### *Withdrawal of objection and rejections*

- The objections to claims 18-19 is withdrawn in light of the amendment to claim 18 which delete “non human Vac14 AA” (see the applicants’ amendment filed 3/20/07 and the amendment filed 5/5/08).
- The rejection of claims 24-26 under 35 USC 112, second paragraph is withdrawn in light of the amendment to claim 24.
- The rejections of claims 24-26 under 35 USC 112, first paragraph (*Written description and Scope enablement*) are withdrawn in light of that the applicant’s arguments set forth in the response filed 12/03/07 and the “Appeal brief” filed 5/5/08” are persuasive.
- The rejection of claims 24-26 under 35 USC 102(e) by Robert et al. is withdrawn in light of the amendment of claims 24-26.

### *New-Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drmanac et al. (WO 0175067 A2).

In patent claim 20, Drmanac et al. disclose an isolated polypeptide of SEQ ID NO:51018 which amino acid residues 90-163 has sequence identity to residues 23-96 of instant SEQ ID NO:3 (see the "attachment" labeled "10791219 SEQ Align"). Also, at page 9, lines 12-20, Drmanac et al. further teach a fragment of the disclosed polypeptide wherein said "fragment" is preferably at least 17 amino acids, which is applied to claim 24.

Because Drmanac et al. teach that the "fragment" is preferably 17 or more amino acids (see page 9, lines 16-17); this encompasses peptide fragments of 20 or 25 or 30 residues in length; and thus, said "fragment" is an obvious variation of instant "oligopeptide" of claims 25 and 16.

Although Drmanac et al. do not expressly or directly disclose the oligopeptide comprising 15 consecutive residues of instant SEQ ID NO:3, it would have been obvious to one of ordinary skill in the art that the fragment can be 15, 20, 25 or 30 residues in length. This is because Drmanac et al. have taught that the "fragment" is preferably at least 17 amino acids and preferably less than 100 amino acid (page 9, lines 16 and 18). Within this narrow range:  $15 \leq \text{length} \leq 100$  (note that the "oligopeptide" of claim 24 is in a range of length "between 15 and 30 residues"), with the aid of a computer, one skilled in the art would have readily made the

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oligopeptides which have immunological activity (see page 9, line 20) and which have obviously included those consisting of 15, 20, 25 or 30 residues in length with reasonable expectation of success.

### ***Conclusion***

Claims 17-18 are free from prior art, and claims 24-26 are not allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel Wei Liu whose telephone number is 571-272-0949. The examiner can normally be reached from 9:00 a.m. to 5:00 p.m. on weekdays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon, can be reached on (571) 272-0931. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PAIR or Public PAG. Status information for unpublished applications is available through Private PAG only. For more information about the PAN system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Samuel W Liu, Ph.D./  
Examiner, Art Unit 1656  
May 21, 2008  
/Karen Cochrane Carlson, Ph.D./  
Primary Examiner, Art Unit 1656

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